

AMENDED IN ASSEMBLY MARCH 8, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 208

Introduced by Assembly Member Eggman

January 23, 2017

An act to amend Sections 1000, 1000.1, 1000.2, 1000.3, 1000.4, 1000.5, and 1000.6 of, and to add Section 1000.65 to, the Penal Code, relating to deferred entry of judgment.

LEGISLATIVE COUNSEL'S DIGEST

AB 208, as amended, Eggman. Deferred entry of judgment: pretrial diversion.

Existing law allows individuals charged with specified crimes to qualify for deferred entry of judgment. A defendant qualifies if he or she has no conviction for any offense involving controlled substances, the charged offense did not involve violence, there is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation that qualifies for the program, the defendant's record does not indicate that probation or parole has ever been revoked without being completed, and the defendant's record does not indicate that he or she has been granted diversion, deferred entry of judgment, or was convicted of a felony within 5 years prior to the alleged commission of the charged offense.

Under the existing deferred entry of judgment program, an eligible defendant may have entry of judgment deferred, upon pleading guilty to the offenses charged and entering a drug treatment program for 18 months to 3 years. If the defendant does not perform satisfactorily in the program, does not benefit from the program, is convicted of specified crimes, or engages in criminal activity rendering him or her unsuitable

for deferred entry of judgment, the defendant's guilty plea is entered and the court enters judgment and proceeds to schedule a sentencing hearing. If the defendant completes the program, the criminal charges are dismissed. Existing law allows the presiding judge of the superior court, with the district attorney and public defender, to establish a pretrial diversion drug program.

This bill would make the deferred entry of judgment program a pretrial diversion program. The bill would make ~~that a defendant qualify for the pretrial diversion program if he or she has no prior conviction within 5 years prior to the alleged commission of the charged offense for any offense involving controlled substances other than the offense that qualifies him or her for diversion~~, *a defendant qualified for the pretrial diversion program if there is no evidence of a contemporaneous violation relating to narcotics or restricted dangerous drugs other than a violation of the offense that qualifies him or her for diversion*, the charged offense did not involve violence, there is no evidence within the past 5 years of a violation relating to narcotics or restricted dangerous drugs other than a violation that qualifies for the program, and the defendant has no prior conviction for a serious or violent felony within 5 years prior to the alleged commission of the charged offense.

Under the pretrial diversion program created by this bill, a qualifying defendant would enter a plea of not guilty, and proceedings would be suspended in order for the defendant to enter a drug treatment program for 6 months to one year, or longer if requested by the defendant with good cause. The bill would require the court, if the defendant does not perform satisfactorily in the program or is convicted of specified crimes, to terminate the program and reinstate the criminal proceedings. The bill would require the criminal charges to be dismissed if the defendant completes the program.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1000 of the Penal Code is amended to
- 2 read:
- 3 1000. (a) This chapter shall apply whenever a case is before
- 4 any court upon an accusatory pleading for a violation of Section
- 5 11350, 11357, 11364, or 11365, paragraph (2) of subdivision (b)
- 6 of Section 11375, Section 11377, or Section 11550 of the Health

1 and Safety Code, or subdivision (b) of Section 23222 of the Vehicle
2 Code, or Section 11358 of the Health and Safety Code if the
3 marijuana planted, cultivated, harvested, dried, or processed is for
4 personal use, or Section 11368 of the Health and Safety Code if
5 the narcotic drug was secured by a fictitious prescription and is
6 for the personal use of the defendant and was not sold or furnished
7 to another, or subdivision (d) of Section 653f if the solicitation
8 was for acts directed to personal use only, or Section 381 or
9 subdivision (f) of Section 647 of the Penal Code, if for being under
10 the influence of a controlled substance, or Section 4060 of the
11 Business and Professions Code, and it appears to the prosecuting
12 attorney that, except as provided in subdivision (b) of Section
13 11357 of the Health and Safety Code, all of the following apply
14 to the defendant:

15 (1) Within five years prior to the alleged commission of the
16 charged offense, the defendant has not suffered a conviction for
17 any offense involving controlled substances other than the offenses
18 listed in this subdivision.

19 (2) The offense charged did not involve a crime of violence or
20 threatened violence.

21 (3) ~~Within five years prior to the determination of eligibility of~~
22 ~~this chapter, there is no evidence of a~~ *There is no evidence of a*
23 *contemporaneous* violation relating to narcotics or restricted
24 dangerous drugs other than a violation of the offenses listed in this
25 subdivision.

26 (4) Within five years prior to the alleged commission of the
27 charged offense, the defendant has no prior conviction for a serious
28 felony, as defined in subdivision (c) of Section 1192.7, or a violent
29 felony, as defined in subdivision (c) of Section 667.5.

30 (b) The prosecuting attorney shall review his or her file to
31 determine whether or not paragraphs (1) to (4), inclusive, of
32 subdivision (a) apply to the defendant. If the defendant is found
33 eligible, the prosecuting attorney shall file with the court a
34 declaration in writing or state for the record the grounds upon
35 which the determination is based, and shall make this information
36 available to the defendant and his or her attorney. This procedure
37 is intended to allow the court to set the hearing for pretrial diversion
38 at the arraignment. If the defendant is found ineligible for pretrial
39 diversion, the prosecuting attorney shall file with the court a
40 declaration in writing or state for the record the grounds upon

1 which the determination is based, and shall make this information
2 available to the defendant and his or her attorney. The sole remedy
3 of a defendant who is found ineligible for pretrial diversion is a
4 postconviction appeal.

5 (c) All referrals for pretrial diversion granted by the court
6 pursuant to this chapter shall be made only to programs that have
7 been certified by the county drug program administrator pursuant
8 to Chapter 1.5 (commencing with Section 1211) of Title 8, or to
9 programs that provide services at no cost to the participant and
10 have been deemed by the court and the county drug program
11 administrator to be credible and effective. The defendant may
12 request to be referred to a program in any county, as long as that
13 program meets the criteria set forth in this subdivision.

14 (d) Pretrial diversion for an alleged violation of Section 11368
15 of the Health and Safety Code shall not prohibit any administrative
16 agency from taking disciplinary action against a licensee or from
17 denying a license. This subdivision does not expand or restrict the
18 provisions of Section 1000.4.

19 (e) Any defendant who is participating in a program authorized
20 in this section may be required to undergo analysis of his or her
21 urine for the purpose of testing for the presence of any drug as part
22 of the program. However, urinalysis results shall not be admissible
23 as a basis for any new criminal prosecution or proceeding.

24 SEC. 2. Section 1000.1 of the Penal Code is amended to read:

25 1000.1. (a) If the prosecuting attorney determines that this
26 chapter may be applicable to the defendant, he or she shall advise
27 the defendant and his or her attorney in writing of that
28 determination. This notification shall include all of the following:

29 (1) A full description of the procedures for pretrial diversion.

30 (2) A general explanation of the roles and authorities of the
31 probation department, the prosecuting attorney, the program, and
32 the court in the process.

33 (3) A clear statement that the court may grant pretrial diversion
34 with respect to any offense specified in subdivision (a) of Section
35 1000 that is charged, provided that the defendant pleads not guilty
36 to the charge or charges, waives the right to a speedy trial and to
37 a speedy preliminary hearing, if applicable, and that upon the
38 defendant's successful completion of a program, as specified in
39 subdivision (c) of Section 1000, the positive recommendation of
40 the program authority and the motion of the defendant, prosecuting

1 attorney, the court, or the probation department, but no sooner than
2 six months and no later than one year from the date of the
3 defendant's referral to the program, the court shall dismiss the
4 charge or charges against the defendant.

5 (4) A clear statement that upon any failure of treatment or
6 condition under the program, or any circumstance specified in
7 Section 1000.3, the prosecuting attorney or the probation
8 department or the court on its own may make a motion to the court
9 to terminate pretrial diversion and schedule further proceedings
10 as otherwise provided in this code.

11 (5) An explanation of criminal record retention and disposition
12 resulting from participation in the pretrial diversion program and
13 the defendant's rights relative to answering questions about his or
14 her arrest and pretrial diversion following successful completion
15 of the program.

16 (b) If the defendant consents and waives his or her right to a
17 speedy trial and a speedy preliminary hearing, if applicable, the
18 court may refer the case to the probation department or the court
19 may summarily grant pretrial diversion. When directed by the
20 court, the probation department shall make an investigation and
21 take into consideration the defendant's age, employment and
22 service records, educational background, community and family
23 ties, prior controlled substance use, treatment history, if any,
24 demonstrable motivation, and other mitigating factors in
25 determining whether the defendant is a person who would be
26 benefited by education, treatment, or rehabilitation. The probation
27 department shall also determine which programs the defendant
28 would benefit from and which programs would accept the
29 defendant. The probation department shall report its findings and
30 recommendations to the court. The court shall make the final
31 determination regarding education, treatment, or rehabilitation for
32 the defendant. If the court determines that it is appropriate, the
33 court shall grant pretrial diversion if the defendant pleads not guilty
34 to the charge or charges and waives the right to a speedy trial and
35 to a speedy preliminary hearing, if applicable.

36 (c) (1) No statement, or any information procured therefrom,
37 made by the defendant to any probation officer or drug treatment
38 worker, that is made during the course of any investigation
39 conducted by the probation department or treatment program
40 pursuant to subdivision (b), and prior to the reporting of the

1 probation department's findings and recommendations to the court,
2 shall be admissible in any action or proceeding brought subsequent
3 to the investigation.

4 (2) No statement, or any information procured therefrom, with
5 respect to the specific offense with which the defendant is charged,
6 that is made to any probation officer or drug program worker
7 subsequent to the granting of pretrial diversion shall be admissible
8 in any action or proceeding.

9 (d) A defendant's participation in pretrial diversion pursuant to
10 this chapter shall not constitute a conviction or an admission of
11 guilt for any purpose.

12 SEC. 3. Section 1000.2 of the Penal Code is amended to read:

13 1000.2. (a) The court shall hold a hearing and, after
14 consideration of any information relevant to its decision, shall
15 determine if the defendant consents to further proceedings under
16 this chapter and if the defendant should be granted pretrial
17 diversion. If the defendant does not consent to participate in pretrial
18 diversion, the proceedings shall continue as in any other case.

19 (b) At the time that pretrial diversion is granted, any bail bond
20 or undertaking, or deposit in lieu thereof, on file by or on behalf
21 of the defendant shall be exonerated, and the court shall enter an
22 order so directing.

23 (c) The period during which pretrial diversion is granted shall
24 be for no less than six months nor longer than one year. However,
25 the defendant may request, and the court shall grant, for good cause
26 shown, an extension of time to complete a program specified in
27 subdivision (c) of Section 1000. Progress reports shall be filed by
28 the probation department with the court as directed by the court.

29 SEC. 4. Section 1000.3 of the Penal Code is amended to read:

30 1000.3. (a) If it appears to the prosecuting attorney, the court,
31 or the probation department that the defendant is performing
32 unsatisfactorily in the assigned program, that the defendant is
33 convicted of an offense that reflects the defendant's propensity for
34 violence, or that the defendant is convicted of a felony, the
35 prosecuting attorney, the court on its own, or the probation
36 department may make a motion for termination from pretrial
37 diversion.

38 (b) After notice to the defendant, the court shall hold a hearing
39 to determine whether pretrial diversion shall be terminated.

1 (c) If the court finds that the defendant is not performing
2 satisfactorily in the assigned program, or the court finds that the
3 defendant has been convicted of a crime as indicated in subdivision
4 (a), the court shall schedule the matter for further proceedings as
5 otherwise provided in this code.

6 (d) If the defendant has completed pretrial diversion, at the end
7 of that period, the criminal charge or charges shall be dismissed.

8 (e) Prior to dismissing the charge or charges or terminating
9 pretrial diversion, the court shall consider the defendant's ability
10 to pay and whether the defendant has paid a diversion restitution
11 fee pursuant to Section 1001.90, if ordered, and has met his or her
12 financial obligation to the program, if any. As provided in Section
13 1203.1b, the defendant shall reimburse the probation department
14 for the reasonable cost of any program investigation or progress
15 report filed with the court as directed pursuant to Sections 1000.1
16 and 1000.2.

17 SEC. 5. Section 1000.4 of the Penal Code is amended to read:

18 1000.4. (a) Any record filed with the Department of Justice
19 shall indicate the disposition in those cases referred to pretrial
20 diversion pursuant to this chapter. Upon successful completion of
21 a pretrial diversion program, the arrest upon which the defendant
22 was diverted shall be deemed to have never occurred. The
23 defendant may indicate in response to any question concerning his
24 or her prior criminal record that he or she was not arrested or
25 granted pretrial diversion for the offense, except as specified in
26 subdivision (b). A record pertaining to an arrest resulting in
27 successful completion of a pretrial diversion program shall not,
28 without the defendant's consent, be used in any way that could
29 result in the denial of any employment, benefit, license, or
30 certificate.

31 (b) The defendant shall be advised that, regardless of his or her
32 successful completion of the pretrial diversion program, the arrest
33 upon which pretrial diversion was based may be disclosed by the
34 Department of Justice in response to any peace officer application
35 request and that, notwithstanding subdivision (a), this section does
36 not relieve him or her of the obligation to disclose the arrest in
37 response to any direct question contained in any questionnaire or
38 application for a position as a peace officer, as defined in Section
39 830.

40 SEC. 6. Section 1000.5 of the Penal Code is amended to read:

1000.5. (a) (1) The presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender, may agree in writing to establish and conduct a preguilty plea drug court program pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. The drug court program shall include a regimen of graduated sanctions and rewards, individual and group therapy, urinalysis testing commensurate with treatment needs, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as agreed to by the presiding judge or his or her designee, the district attorney, and the public defender. If there is no agreement in writing for a preguilty plea program by the presiding judge or his or her designee, the district attorney, and the public defender, the program shall be operated as a pretrial diversion program as provided in this chapter.

(2) A person charged with a misdemeanor under paragraph (3) of subdivision (b) of Section 11357.5 or paragraph (3) of subdivision (b) of *Section 11375.5* of the Health and Safety Code shall be eligible to participate in a preguilty plea drug court program established pursuant to this chapter, as set forth in Section 11375.7 of the Health and Safety Code.

(b) The provisions of Section 1000.3 and Section 1000.4 regarding satisfactory and unsatisfactory performance in a program shall apply to preguilty plea programs, except as provided in Section 11375.7 of the Health and Safety Code. If the court finds that (1) the defendant is not performing satisfactorily in the assigned program, (2) the defendant is not benefiting from education, treatment, or rehabilitation, (3) the defendant has been convicted of a crime specified in Section 1000.3, or (4) the defendant has engaged in criminal conduct rendering him or her unsuitable for the preguilty plea program, the court shall reinstate the criminal charge or charges. If the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed and the provisions of Section 1000.4 shall apply.

SEC. 7. Section 1000.6 of the Penal Code is amended to read:

1000.6. (a) A person who is participating in a pretrial diversion program or a preguilty plea program pursuant to this chapter is authorized under the direction of a licensed health care practitioner,

1 to use medications including, but not limited to, methadone,
2 buprenorphine, or levoalphacetylmethadol (LAAM) to treat
3 substance use disorders if the participant allows release of his or
4 her medical records to the court presiding over the participant's
5 preguilty plea or pretrial diversion program for the limited purpose
6 of determining whether or not the participant is using such
7 medications under the direction of a licensed health care
8 practitioner and is in compliance with the pretrial diversion or
9 preguilty plea program rules.

10 (b) If the conditions specified in subdivision (a) are met, the
11 use by a participant of medications to treat substance use disorders
12 shall not be the sole reason for exclusion from a pretrial diversion
13 or preguilty plea program. A patient who uses medications to treat
14 substance use disorders and participates in a preguilty plea or
15 pretrial diversion program shall comply with all court program
16 rules.

17 (c) A person who is participating in a pretrial diversion program
18 or preguilty plea program pursuant to this chapter who uses
19 medications to treat substance use disorders shall present to the
20 court a declaration from his or her health care practitioner, or his
21 or her health care practitioner's authorized representative, that the
22 person is currently under their care.

23 (d) Urinalysis results that only establish that a person described
24 in this section has ingested medication duly prescribed to that
25 person by his or her physician or psychiatrist, or medications used
26 to treat substance use disorders, shall not be considered a violation
27 of the terms of the pretrial diversion or preguilty plea program
28 under this chapter.

29 (e) Except as provided in subdivisions (a) to (d), inclusive, this
30 section does not affect any other law governing diversion programs.

31 SEC. 8. Section 1000.65 is added to the Penal Code,
32 immediately following Section 1000.6, to read:

33 1000.65. This chapter does not affect a pretrial diversion
34 program provided pursuant to Chapter 2.7 (commencing with
35 Section 1001).